IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO. 234 OF 2003

IN

SPECIAL NDPS CASE NO. 551 OF 1997

STEPHEN CHIKA NDU
NIGERIAN NATIONAL
HOLDING NIGERIAN PASSPORT
NO. C-429771. ..APPE**LLANT**

V/S

1. CHANDRAKANT K. CHATURVEDI,I.O.
AIR INTELLIGENCE UNIT CUSTOMS
SAHAR INTERNATIONAL AIRPORT,
MUMBAI, SAHAR, ANDHERI (EAST)
MUMBAI 400 099.
2. STATE OF MAHARASHTRA ..RESP**ONDENTS**

MR. SARPANDE FOR THE APPELLANT.
MR. LAMBAY FOR UNION OF INDIA.

CORAM : J.H. B**HATIA, J.**
D**ATE : 11TH JUNE, 2007.**

JUDGMENT

1. The Appellant, who is Nigerian National, was caught by Air Intelligence Unit on 26-7-1997, when he had checked in one brown zipper suit case and one black zipper suit case. On opening the

zipper suit cases it was found that they contained some blankets and one Diplomat hardtop suit case each. The said hardtop suit cases had built-in false top and false bottom containing polythene and small packets containing brown powder. From the said bags 14.780 kgs. of brown powder was recovered. It was confirmed by C.A. report that brown powder contained heroin. After investigation charge sheet was filed and accused was put to trial. After trial he was convicted for the offences punishable under section 21 as well as under sec. 28 r/w sec. 23 of the NDPS Act and was sentenced to undergo R.I. for 15 years and to pay fine of Rs. 2 lacs and in default to payment of fine to undergo further R.I. for one year on each count. Substantive sentence on both the counts was to run concurrently. This appeal is preferred against the conviction and sentence on both the counts.

2. Mr. Sarpande, learned counsel for the appellant at the outset contended that the

accused/appellant is in jail since 26-7-1997, when he was arrested and thus he is about to complete 10 years of imprisonment. According to him the sentence awarded by the trial court on both the counts is very harsh. He pointed out that on the same day and time, another accused Gabriel was also arrested and in his custody 30 kgs. of brown powder was found and he also preferred Appeal against the conviction and sentence vide Criminal Appeal No. 835 of 2003 and this court has reduced the sentence of imprisonment on both the counts to R.I. for 10 years and fine is also reduced to Rs. one lac and, in default sentence was also reduced from one year to three months on each count. The learned counsel Mr. Sarpande has contended that both the accused were caught at the same time and were found in possession of the brown sugar. The quantity of brown sugar in the case of the present appellant was half of the quantity found with Gabriel. In such circumstances, the present appellant also deserves to be treated like Gabriel and he should not be required to remain in jail for a longer period.

3. Learned APP submited that appropriate order in the given circumstances may be passed. Learned counsel for the Appellant does not press the Appeal against the conviction.

4. It is to be noted that initially Gabriel, also a Nigerian National, was caught on suspicion and in his baggage brown powder was detected. On the basis of the information given by him, the present appellant also came to be nabbed and when his baggage was checked 14.780 kgs. of brown powder was found. It is a commercial quantity. Under section 21 of NDPS Act, whoever, in contravention of any provisions of the NDPS Act, is found in possession of any manufactured drug or any preparation containing any manufactured drug shall be punishable with a rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees, in case the contravention involves

commercial quantity. If a person imports or exports any such narcotic drugs into India and it involves commercial quantity, similar sentence is

provided under section 23. Section 28 provides that whoever attempt to commit any offence punishable under this Chapter or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the sentence provided for the offence. In the present case the Appellant/accused was found in possession of commercial quantity of the manufactured drug or preparation containing the manufactured drug and therefore he is liable to be convicted under section 21 and as he attempted to export such drug from India he is liable to be convicted under section 23 read with sec. 28 of the NDPS Act. Taking into consideration the commercial quantity found with him minimum sentence which may be awarded on each of the counts shall be rigorous imprisonment not less than 10 years and fine of Rs. one lac, though maximum imprisonment is upto 20 years and fine of Rs. 2 lakhs.

5. In the case of Gabriel, who was prosecuted and

convicted in a separate case, this court reduced the sentence to the minimum prescribed under the law. He was found in possession of brown powder which was double of quantity found in possession of the present Appellant. There can be no

justification to award more sentence or fine to the appellant. As per the order of the trial court, the appellant/accused should remain in jail for 15 years and two years in default to pay fine. The total period of rigorous imprisonment comes to 17 years. In my opinion the above sentence is very severe and harsh. The trial court has also not given any valid reasons for awarding R.I. for 15 years and fine of Rs. 2 lakhs. In my opinion the present Appellant deserves to be allowed to the extent of punishment.

6. Therefore the Appeal is partly allowed. The conviction of the accused/appellant under section 21 and u/s. 28 r/w s. 23 of NDPS Act is maintained. However the impugned order about sentence stands modified as follows:

On each of the counts the accused is sentenced

to undergo R.I. for 10 years and to pay fine of Rs. one lakh and in default to pay, he shall undergo further R.I. for 3 months.

Substantive sentence of imprisonment on both the counts shall run concurrently.

(J. H. BHATIA, J.)